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STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
Fifth session
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STATEMENT MADE BY THE CHAIRMAN OF THE CONFERENCE AT THE CLOSING OF THE FIFTH SESSION, ON 12 APRIL 1995

1. I would like first of all to thank you most sincerely for the very intensive and constructive manner in which you have utilized the two and a half weeks available to us for negotiations during this session. I believe we have made considerable progress in all areas of our work. We were able to review in detail the Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. While this review took us longer than anticipated, it was nevertheless important and useful to get your comments and suggestions for the revision of the draft.

2. Your further comments and observations on the revised draft, which appeared in the form of conference room papers and for which advance copies were also made available to you, helped immensely in the preparation of the final text for this session, which is now contained in A/CONF.164/22/Rev.1.

3. It is well at this time to recall the mandate given to us by the General Assembly at its forty-seventh session, in its resolution 47/192 of 22 December 1992. Under this mandate, the Conference is required to seek means of promoting the effective implementation of the provisions of the United Nations Convention on the Law of the Sea, with respect to straddling fish stocks and highly migratory fish stocks. In so doing, the Conference is required to identify and assess existing problems related to the conservation and management of those two types of fish stocks; to consider means of improving fisheries cooperation among States; and to formulate appropriate recommendations.

4. This mandate, which was based on the decision of heads of Government at the Earth Summit in Rio de Janeiro, reflected the concern of the international

community with the state of world fisheries and the realization that there was a pressing need for long-term and sustainable conservation and management measures for straddling fish stocks and highly migratory fish stocks. In Agenda 21 of the United Nations Conference on Environment and Development, the problems were identified as inadequate management of fisheries, over-utilization of some stocks, unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficient selection of gear, unreliable databases and lack of sufficient cooperation between States.

5. The situation regarding world fisheries since this Conference began in 1993 has not changed. In fact, it has worsened. Recent reports from the Food and Agriculture Organization of the United Nations (FAO) indicate that the downward trend in total fish catch from the oceans continues. The reports generally confirm the urgent need for States to implement effective conservation and management measures to rebuild stocks.

6. We have been trying at this Conference, since its inception, to address the problems of effective conservation and management of the two types of stocks. We identified the problems in the early part of the Conference. Since then, the Conference has been discussing how to address the problems in an effective and decisive manner in order to establish better resource management practices and to ensure sustainable use of the resources.

7. This Conference must deliver an outcome which provides for better conservation and management of straddling fish stocks and highly migratory fish stocks as a whole, based on compatible measures taken in areas within national jurisdiction and those on the high seas, the use of the precautionary approach, including the use of reference points for total allowable catch, and requirements relating to data collection. We have the responsibility to ensure that the resources we are concerned with are available in a healthy condition for the use of present and future generations. For this purpose, sustainable use of these resources is the common responsibility of all who are present-day custodians of the resource.

8. Our efforts in this regard are reflected in the draft agreement contained in document A/CONF.164/22/Rev.1. The text of that agreement takes a balanced approach between the interests of the coastal States and those of the distant-water fishing nations. But these are not the only interests that must be considered. In addressing the problems, we must also take into account the collective interest of the international community as a whole, if we are to secure sustainable use of the resources for present and future generations.

9. In examining the text, one should look for balance in its substantive content, and not on how often certain preferred words or phrases have been used. The text acknowledges that stocks must be managed in an effective way. It recognizes the biological unity of stocks and the different legal regimes applying in the areas under national jurisdiction and on the high seas consistent with the provisions of the 1982 United Nations Convention on the Law of the Sea. You will find that in devising measures for better management, the text goes beyond just addressing the problems of the high seas and seeks to establish that better management of stocks is the responsibility of all States

and in all zones, taking into account the respective competences of States under the Convention.

10. In order to achieve the objective of long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks, the text creates three essential pillars.

11. First, it provides for principles and practices on which better management of stocks should be based. The first objective of these is to seek compatible conservation and management regimes both inside and outside areas of national jurisdiction. These measures should be established on the basis of a precautionary approach and should use reference points for establishing the level of utilization of stocks. They should be based on the best scientific information available, and for this purpose an essential element in the management procedures is the requirement for the collection and exchange of data and information.

12. The second pillar is the need to ensure that the conservation and management measures adopted for the high seas are adhered to and complied with, and that they are not undermined by those who fish in those areas. This must be the collective responsibility of all States concerned in a particular fishery. In respect of areas under national jurisdiction, there is an identifiable and accountable authority, that is, the coastal State. The responsibilities of the coastal State are clearly stated in the Convention and have been further elaborated and reinforced in the present draft Agreement in terms of better management practices that are to be applied. In particular, the provisions of articles 5, 6 and 7 of the draft will also apply in areas under national jurisdiction.

13. On the high seas, however, the traditional responsibility for ensuring that conservation and management measures are adhered to and complied with is that of the State whose flag the fishing vessel flies. This principle was developed at a time when the resources in the ocean were considered to be limitless and when vessels did not travel such vast distances to fish as they do today. Today's fishing practices are a reflection of modern methods of fishing and of the rapid development of technology during the latter half of the twentieth century. The result is that there is great pressure on stocks and keen competition for them. We are, therefore, now faced with the need to regulate fisheries on the high seas. Indeed, the Convention on the Law of the Sea, which has responded to the needs of the twentieth-century international community and has revised and modified many of the old concepts, customs and practices in relation to the oceans, recognizes that the right to fish on the high seas is coupled with a duty to cooperate in the conservation and management of those resources. This cooperation must apply to all aspects of conservation and management measures, including the enforcement measures necessary to ensure compliance with subregionally, regionally or globally agreed measures. The flag State is not always in a position to undertake enforcement action that is required, either because of its distance from the area where enforcement action is to be taken or because it is simply unwilling to act.

14. If we are to achieve better management of fisheries, our Agreement must go beyond the concept that the flag State is the only authority for the taking of

enforcement measures in all circumstances. Effective enforcement on the high seas must rely on better cooperation among States in a manner that promotes the community interest on the one hand, and protects the interest of a flag State on the other, in a fair and balanced way.

15. The exclusive jurisdiction of a State over vessels flying its flag on the high seas is not immutable. The Convention provides for instances when non-flag States are permitted to take action on the high seas to safeguard the interests of the international community. Examples of these are to be found in article 110 in respect of ships engaged in activities such as piracy and the slave trade. Under article 111, intervention on the high seas is permitted in the exercise of the right of hot pursuit. A more recent example where the needs of the international community necessitated the development of enforcement possibility for non-flag States is in the area of drug trafficking. There are also arrangements among States for intervention by non-flag States on the high seas in order to discourage illegal migration.

16. In the field of fisheries, there already exist examples of non-flag State action - in particular, boarding and inspection of vessels - in an increasing number of regional fisheries arrangements. Examples of these include: the Northwest Atlantic Fisheries Organization (NAFO), the Bering Sea "Donut Hole" Pollack Agreement, the Convention on the Conservation of Antarctic Marine Living Resources and the Niue Treaty in the South Pacific.

17. Taking into account these developments, and the need for improved enforcement regimes in support of regionally agreed conservation and management measures, the draft Agreement provides for strengthened cooperation at the global and regional levels in the enforcement of fisheries measures. The outcome of the Conference on this issue must be based on a globally recognized right to board and inspect vessels in support of subregionally, regionally or globally agreed conservation and management measures. Specific procedures should be developed at the regional level to take into account the particular circumstances of each fishery and the area in which the procedures will apply. Nevertheless, basic standards and principles need to be set in a global agreement in order to avoid a proliferation of different rights with differing degrees of assertion, and in order to create certainty and stability in the oceans for all.

18. In developing provisions in this area, we need to ensure that the possible enforcement measures that non-flag States may take should be a last-resort action. The primary responsibility must remain for the flag State to exercise its jurisdiction. There is therefore a need for a balance between the inherent jurisdiction of the flag State and the action that may be taken by a non-flag State in support of regionally agreed measures. Clearly, this is an area in the draft Agreement which needs careful examination and where further work is necessary to achieve the level of balance with which the Conference as a whole can feel comfortable.

19. The third pillar of the draft agreement is the provision on peaceful settlement of disputes. Conflicts concerning the use of the oceans are not new, nor will they cease. We must, however, not only find mechanisms to avoid conflicts in the fisheries area through clear definition of measures, standards

and objectives in the conservation and management of marine living resources, but also establish procedures for resolving disputes peacefully in a manner that promotes the sustainable use of resources through improved cooperation among States.

20. One of the cornerstones of the 1982 United Nations Convention on the Law of the Sea is the part relating to the compulsory and binding settlement of disputes arising out of the interpretation and application of the provisions of the Convention. The dispute settlement provisions contained in Part XV of the Convention were elaborated after long and careful deliberation, and have been widely accepted. They provide an appropriate basis for dealing with disputes arising under the Agreement on which we are working, since the fundamental purpose of the draft Agreement is the effective implementation of the relevant provisions of the Convention concerning straddling fish stocks and highly migratory fish stocks. I am pleased that the Conference has made considerable progress on this matter during this session and it would be fair to conclude that there is widespread support for the use of the dispute settlement provisions contained in the Convention for the purposes of this Agreement. This has obviated the need for the Conference to devise a new mechanism for the settlement of disputes in the Agreement.

21. The other parts of the draft Agreement provide the means and mechanisms for the effective implementation of the three pillars which I have outlined. Part III contains the essential mechanism for cooperation at subregional and regional levels. It sets out a guideline for regional cooperation.

22. Part IV deals with States which are not members or parties to subregional or regional fisheries management organizations or arrangements. Part V deals with responsibilities of flag States and Part VII deals with the requirements of developing States in the implementation of the Agreement. On most, if not all of these provisions, there is already broad agreement.

23. I hope you will study the text of the draft Agreement between now and the next session with an open mind. You should look to see whether the objective of long-term sustainable use of fisheries resources can be effectively achieved through this Agreement. The text that has been prepared takes into account the views that have been expressed in the Conference. Naturally, no one can expect that all the different proposals and suggestions have been reflected in full or even in part in the text. However, an attempt has been made to incorporate as much as possible. Some of the proposals were opposed by some delegations. Some others, if incorporated in particular sections or parts, would have produced a result which would, in my judgement, create an imbalance in the text as a whole. I therefore appeal to you that in evaluating the results of this session as contained in the draft Agreement, you should look not for a perfect text, but for a text which the Conference as a whole can live with. This, of course, does not preclude the raising of issues which may be essential or which may require further discussion before the final adoption of a text.

24. As we have decided already, the next session is the final session of this Conference, at which we must conclude our work by adopting an Agreement. It is going to be a short session and much of the time, as you know already, must be

devoted towards technical aspects relating to the finalization of the text and its harmonization in all languages.

25. We will also need to look at the draft Final Act of the Conference which the Secretariat will prepare for us. I recognize that during the very early part of the session, we may need to look at some of the substantive matters with a view to possible improvement of the text. We must, however, limit the number of issues that we reopen, given the short time that will be available to us.

26. Our schedule for the next session, therefore, will be a very tight one. I encourage those who wish to undertake informal consultations in preparation for the next session to do so in the hope that by the time we begin the next session, we have come to an understanding on any outstanding matters.

27. The programme of work for the next session was already decided at the fourth session of the Conference. I do not believe it is necessary to revisit it at this time.